

# SENATE BILL REPORT

## ESHB 2747

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As Reported by Senate Committee On:  
Human Services & Corrections, February 25, 2010

**Title:** An act relating to the use of restraints on pregnant women or youth.

**Brief Description:** Limiting the use of restraints on pregnant women or youth.

**Sponsors:** House Committee on Human Services (originally sponsored by Representatives Darneille, Cody, Williams, Kagi, Pedersen, Nelson, Dickerson, Hasegawa and Chase).

**Brief History:** Passed House: 2/13/10, 95-0.

**Committee Activity:** Human Services & Corrections: 2/23/10, 2/25/10 [DPA, w/oRec].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Kauffman and McAuliffe.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Brandland.

**Staff:** Jennifer Strus (786-7316)

**Background:** The Department of Corrections (DOC) has a policy on the use of restraints of pregnant or postnatal offenders which provides the following:

- The use of restraints of pregnant or postnatal offenders must be conducted in a manner involving minimal use of restraints and most privacy wherever possible, consistent with the safety of the public, staff, and offender.
- The use of standard restraints may be deviated from where there are serious and imminent concerns that the offender may attempt to harm herself, others, or present a credible risk of escape. In this case, soft restraints may be used in front of the body. This situation requires a physician's agreement to initiate the use of restraints and will be removed if requested by a physician.
- During transport, no restraints will be applied if the offender is on her third trimester of pregnancy.
- If admitted to a hospital, but not in active labor, a single leg restraint may be used, based on the offenders designated custody level.

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- No restraints will be applied during labor and delivery.
- All efforts will be made to allow the offender mother reasonable access to her baby without impeding her movements by restraints.

The restraint policy of the Juvenile Rehabilitation Administration (JRA) provides that staff may use approved physical restraint and restraint devices in the following situations:

1. when a youth presents an immediate danger to self, others, or property; is a risk to escape; is out of control; or is disruptive to the orderly function of the unit or activity;
2. when transporting youth in the community; or
3. when transporting a youth on institutional grounds when the youth:
  - presents an immediate danger to self, others, or to property;
  - is a risk to escape;
  - is out of control; or
  - has not been under observation for an adequate time to assess the youth's risk to escape or assault.

Although JRA does not have a restraint policy specific to pregnant youth, their practice is to not use restraints during labor.

The restraint policies used by county and city jails and juvenile detention facilities vary and few of them have restraint policies specific to pregnant women and youth.

**Summary of Bill (Recommended Amendments):** Except in extraordinary circumstances, DOC, JRA, local jails, and juvenile detention facilities cannot use any restraints on an incarcerated woman or youth in her third trimester of pregnancy during transportation to and from visits to medical providers and court hearings, or during post partum recovery. Extraordinary circumstances exist where a corrections officer or facility employee makes an individualized determination that restraints are necessary to prevent the woman or youth from escaping or from injuring herself, medical or corrections personnel or others. If the corrections officer or facility employee determines that extraordinary circumstances exist and restraints are used, the person must fully document in writing the reasons that determination was made. The officer or employee must also include as part of the documentation the kind of restraints used and the reason those restraints were considered the least restrictive available and most reasonable under the circumstances.

During the time the pregnant woman or youth is in labor or childbirth, no restraints of any kind may be used. Nothing in the bill restricts the use of hospital restraints requested for the medical safety of a patient by treating physicians. Anytime restraints are permitted to be used on an incarcerated pregnant woman or youth, they must be the least restrictive available and the most reasonable under the circumstances. In no case may leg irons or waist chains be used on any incarcerated woman or youth known to be pregnant.

During labor and childbirth, no corrections personnel or facility employees can be present in the room unless specifically requested by medical personnel. If the personnel's presence is requested, that person should be female if practicable.

If medical personnel treating the pregnant woman or youth requests that restraints not be used, the corrections officer or facility employee accompanying the woman or youth must immediately remove all restraints.

In DOC, JRA, and juvenile detention facilities, the person in charge of the facility must provide an informational packet about the requirements of the bill to all medical staff and nonmedical staff involved in transporting pregnant woman and youth. The information packet may also be provided to other staff if appropriate. Information about the requirements of this bill must be provided to all woman and youth who are pregnant at the time the facility assumes custody of them. A notice about the requirements of this bill must also be posted in conspicuous locations in the facilities, including locations where medical care is provided.

The local jail administrator must provide notice of the requirements of this bill to medical staff and staff involved in transporting pregnant woman and youth. The requirements of this bill must be provided to woman and youth of child bearing age at intake. Notice of the requirements of the bill must be posted in locations in the jail where medical care is provided.

Counties, jail officers, or employees are not liable unless they are grossly negligent.

No later than September 1, 2010, Washington Association of Sheriffs and Police Chiefs (WASPC), DOC, JRA, and the Criminal Justice Training Commission must jointly develop an informational packet on the requirements of this bill.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** Adds a provision that when a woman is in labor or child birth, hospital restraints can be used for the patient's safety if requested by the treating physician. Adds liability protection for counties, jail officers, and employees.

**Appropriation:** None.

**Fiscal Note:** Available on original bill.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: Use of restraints on pregnant women and youth is an issue being addressed in many states and the U.S. Marshall Services. Dealing with high risk pregnancies and anything we can do to assist with the births of healthy babies. We currently have problems in our system and clearly need a state law on this topic. The exceptions to the restraint policy are carefully limited to extraordinary circumstances and this is a positive approach. The use of restraints should be documented as well. Shackling women during childbirth is a violation of the 8th Amendment – there should be no exception to this, even for medical personnel. Giving medical personnel the ability to determine when restraints will be used is an inappropriate role for medical personnel. Have never experienced a situation where an incarcerated pregnant woman tried to escape. Have also had to ask corrections officers to remove

restraints during labor and childbirth and sometimes have had to strenuously argue this point. Also concerned with restraining during postpartum recovery because women who have just given birth need to be able to move around and also need two hands to breast feed. The term medical personnel should be defined.

OTHER: Support all provisions regarding the use of restraints during labor, delivery, and postpartum recovery. There is concern by sheriffs and jail administrators about the outright ban on the use of waist chains during early pregnancy. Need some flexibility in early stage pregnancies.

**Persons Testifying:** PRO: Representative Darneille, prime sponsor; Senator Fraser; Sara Ainsworth, Legal Voice; Dr. Karen McLean, American College of Obstetrics and Gynecology; Kimberly Mays, citizen.

OTHER: Don Pierce, WASPC.